United States Court of Appeals for the Second Circuit



APPELLANT'S BRIEF & APPENDIX

plants

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

No. 76 - 7384

B

ROBERT CALHOUN JR.,

Plaintiff-Appellant,

-against-

THE STATE OF NEW YORK, its agents,
SUPREME COURT OF NEW YORK, QUEENS
COUNTY, CHIEF CLERK KALISKI, COURT
OFFICER REED, MR. KRUMSEIK and
ALICE M. SMITH CALHOUN and GEORGE M.
WINSTON Defendants-Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COUFT FOR THE EASTERN DISTRICT OF NEW YORK

BRIEF FOR PLAINTIFF - APPELLANT WITH APPENDIX

Robert Calhoun Jr. 111 - 11 132 Street Jamaica, New York (11420) JA - 9 - 1374

Attorney Pro se

PAGINATION AS IN ORIGINAL COPY

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*Note: Transcripts are in a separate appendix

UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

-against-

ROBERT CALHOUN JR., Plaintiff-Appellant

THE STATE OF NEW YORK et al., Defendants-Appellees.

Preliminary Statement

This is an appeal from a "Memorandum and Order" issued in the United States District Court for the Eastern District of New York on September 26, 1975 by Hon. Orrin G. Judd. The order is final and it dismisses the complaint against the State of New York and the Supreme Court of the State of New York, Queens County and it further denied the motion to stay the judgement of the Supreme Court of New York, County of Queens without prejudice.

The plaintiff-appellant questions the impartially of Hon. Orrin G. Judd's order since he had confidential correspondance with the defendants prior to or at the same time as he was issuing his "Memorandum and Order" and also due to the fact that he interceded on behalf of the defendant The State of New York in his interpretation of the "Complaint".

Questions Presented

1. Is the State of New York a state in the meaning of the Fourteenth Amendment's "due process clause" and the "equal protection clause"?

Questions Presented

- 2. Can the State of New York be sued in a Federal Court for the acts of its agents and institutions that violate the Fourteenth Amendment guarantees of privileges and immunities of citizens of the State of New York?
- 3. Is it the duty of the State of New York to grant due process and equal protection of its "Domestic Relations Laws" as they pertain to divorce actions whether in granting default decrees or any other kind of treatment by court order or judgement?
- 4. Can a judgement that is contrary to the "Domestic Relations Laws" of the State of New York in granting a divorce be enforced when it denies the defendant an opportunity to be heard and does not accord the defendant equal protection of its laws pertaining to the divorce action?

Nature Of The Case

This is a divorce action that was brought in the Supreme Court of New York, Queens County by Alice M. Calhoun against Robert Calhoun Jr. The plaintiff-appellant alleges that he was denied an opportunity to be heard in the matter and that the Supreme Court of New York aggravated this denial when it refused to allow the defendant in the divorce action to file a motion requesting an opportunity to be heard in the matter. He further states that the Supreme Court acted contrary to the Domestic Relations Laws of the State of New York and thus denied him equal protection of these laws.

Statement Of Facts

The plaintiff-appellant, Robert Calhoun Jr., was served the summons and complaint on or about the 25th day of February 1975 at his home located at 111-11 132nd Street, Jumaica, Queens County, New York.

Statement Of Facts

On or about March 6, 1975, the plaintiff-appellant did go to the Supreme Court located at 88-15 Sutphin Blvd., Jamaica, New York to inquire as to how he should go about serving a proper answer to the summons and complaint. The clerk on the main floor sent me to the matrimonial clerk where I was told that no such action had been filed in that part of the court. I could not locate this divorce action in the Supreme Court on Sutphin Blvd. so I then went to the Supreme Court on Queens Blvd. where I was told that they only handle criminal type cases in that part of the court.

On or about March 10, 1975, I went to Mr. George M. Winston's office on Queens Blvd., Forest Hills, New York to find out what all the action was about. I was urged by Mr. Winston to get counsel so that an equitable distribution of the properties could be arranged. I told Mr. Winston that I was not interested in dividing the real estate up nor was that the purpose when we bought it. We had planned to use the income from the real estate to send the children through college and then if they were interested to give them one property each to give them a start in life. My plans have not changed nor have I reconsidered my original intentions. Mr. Winston at that point said that he would not discuss the matter with me any further and that I should get an attorney to work out the details with him. Our meeting ended on that point.

I did not hear from Mr. Winston again until July 1975, when he wrote me a letter saying that my wife had given him the instructions to go forward with the divorce action and that I should be in touch with him within ten days. I did not contact Mr. Winston but I waited to receive some legal proceeding from him or the Supreme Court that the divorce proceeding had been initiated.

Statement Of Facts

On or about September 15, 1975 as I arrived home from work, my oldest daughter, Roberta E. Calhoun handed me a legal document that she said someone had left for me. She went across the street to get Mrs. Hicks to witness her handing me the document as if she had been instructed to serve it on me in person with a witness. I took the "Findings and Judgement" and I read it and I had planned to answer it on Thursday September 18, 1975 because I had to prepare to come before Hon. Kevin T. Duffy in another legal matter that was pending in the United States District Court for the Southern District of New York. I appeared before Hon. Kevin T. Duffy and found it imperative to introduce a motion for summary judgement immediately so I did not get to answering the "Findings and Judgement" until Friday September 19, 1975 but prior to filing my answer I went to library to get the proper format and form to submit to the court. I even compared my format with the documents that I had received.

On September 19, 1975 when I submitted my motion for an opportunity to be heard, the clerk in "Matrimonial Part 5" sent me to Mr. Kaliski's office on the fifth floor to get my papers approved. I went to Mr. Kaliski's office but no one in that office would accept my papers they said that the papers were not in the proper form. I asked them what was wrong with the papers but no one could tell me what was wrong but they kept telling me that a lawyer could tell me what was wrong. I asked to see the administrative judge of the court and I was directed to go to the third floor to Judge Weinstein. On the third floor I was met by a Mr. Hecht who escorted me back to Mr. Krumseik, clerk of Matrimonial Part 5, they suggested that I go to the legal aid society to get my papers fixed up properly. I said, "If you tell me what is wrong with my papers, I'll fix them myself". They said that they could

not tell me what was wrong but that a lawyer could fix up my papers for me. I said that they should either accept my papers or reject them for whatever reason they saw fit but to do one or the other so that I could get on with the business. Mr. Hecht wanted to talk about how when you get an unexpected divorce it always affect people in an adverse way. I said that I wanted to see a judge and I went over to an officer in the lobby and asked him if he would show me to a judge. He took me to the room where Hon. Anthony M. Livoti was presiding. I sat down in the courtroom while the judge was presiding over some matter. Mr. Hecht came into the room and went and stood behind the rostrum where the judge was presiding. He came down to speak with the court officer and then he went back to stand behind the judge's rostrum. When the judge was about to conclude his case, I stood so that I could get the judges attention and that is when Court Officer Reed confronted me and said that he would not allow me to see the judge because he didn't handle matrimonials and that I should go to the matrimonial clerk. When I asked him who was going to stop me from seeing the judge he said that he was. I asked him what his name was and I left the courtroom.

I went to each clerk that had refused to accept my papers and gct their names and on the followering Monday I filed a complaint against the State of New York and its agents etc.

On or about September 28, 1975, I received the "Memorandum and Order" issued by Hon. Orrin G. Judd dismissing the action against the State of New York and the Supreme Court, Queens County. I appealed this decision to the United States Court of Appeals for the Second Circuit on the 3rd day of October 1975.

On or about October 19, 1975, I was served with an order to show cause why
I should not be held guilty of contempt of court for not obeying the divorce judgement.
I made a written reply to the show cause order which the Hon. Joan Marie Durante

treated as a cross-claim motion for an order vacating and setting aside the judgement of divorce entered on September 9, 1975. This matter was heard before Hon. Edwin Kassoff on February 4, 1976 and as requested I submitted a written memorandum of law setting forth both law and previous judgement on the same matter to establish grounds for my arguments. On or about March 10, 1976, I was in the Supreme Court of New York to inquire as to the disposition of the case when I was given a copy of a Memorandum dated February 24, 1976 by Kassoff. This memorandum there is an affirmation of the order to show cause and a denial of the cross motion while it makes no mention of the "Memorandum Of Law" submitted by the defenant in this case.

On or about April 13, 1976, after filing a notice of appeal to the Appellate Division of the Supreme Court, Second Department, the plaintiff-appellant motion to have his appeal joined with this appeal. The appeal in the United States Court Of Appeals was stymied because of a time limitation on paying docketing fees. I had made a motion to extend the time for paying these fees since it was not in accordance with the procedure nor the instruction given to me by the clerk of the United States District Court for the Eastern District of New York.

On or about May 5, 1976, the defendants did execute a sheriff's levy against the plaintiff-appellant by withdrawing from his bank account \$2,358.28. (Letter in Appendix)

On or about August 9, 1976, the plaintiff-appellant was granted time to August 16, 1976 to pay the docket fees due on this appeal. The fees have been paid within the August 16, 1976 time limitation. On or August 25, 1976, a motion was introduced by the plaintiff-appellant requesting that the records of the Supreme Court of New York be made a part of the records of this case for the purpose of fil-

Statement Of Facts

ing briefs and indexing the records of this case. Further consideration was requested for an extension of time because the plaintiff-appellant has not viewed the records of this case since before December 18, 1975.

Argument I

The plaintiff-appellant argues that the Supreme Court of the State of New York did not have jurisdiction over the plaintiff-appellant when it issued its "Findings and Judgement" because the summons and complaint had not been filed in the court prior to the issuing of the decree. (see summons and complaint-date stamped)

The date stamped on the court records is September 10, 1975 the day after the Findings and Judgement was issued by Hon. Joan Marie Durante. This further explains why there was no record of this action when the plaintiff went to the court to reply to the summons and complaint. I argue that this procedure denies one the opportunity to be heard and due process of law. The Constitution as interpreted by the Supreme Court of the United States requires that one be given a reasonable opportunity to be heard. I can not see how this is reasonable or even proper for a Domestic Relation case where such procedures could be said to be coercive and persuasive in encouraging one to embark on such procedure as to insure a default divorce or as a method of guaranteeing a client a default divorce. It is the duty of the court to project against this form of chicanery and the stamped date of filing is used just for such a safe guard.

I believe that this was an intentional act to deny me the opportunity to be heard in this matter and was conspired in by both Alice M. Smith Calhoun and her counsel George M. Winston. I believe that this is considered as coercions and collusion which is forbidden by the Domestic Realtions Laws of New York.

Argument I I

In order that a divorce can be granted according to the Domestic Relation

Laws of New York, the court must be satisfied that a marriage exist. The defendants have failed to supply that proof. The testimony of the defendant indicate that she
does not know where she was married at eventhough she had lived in the same area
for more than twenty-one years. She had gone through High School and completed
college while living in the same area yet when she was cross examined as to where
she was married she named two locations one of which the plaintiff swears that he
was not ever married in. I believe that this lack of evidence in the court denies me
the equal protection of the laws of the State of New York.

In the original testimony given by the defendant, Alice M. Smith Calhoun, she testified that she was married in the City of St. Louis, in St. Louis County. In a cross examination by the plaintiff-appellant, she testified that she was married in Richmond Heights, Missouri. When confronted with her first testimony her reply was that they are both the same. The plaintiff-appellant can verify that the two locales do exist separate and identifiable. They are both a part of St. Louis County but they are not the same. I can further prove that the witness knew that the two locations were not not the same place.

I believe that the court should have taken judicial notice of this inconsistant testimony if no more that to clarify the fact that in a subdivision of a county you have a location that can be determined by either of two names. How would one get directions to go to this unique place? How would you indicate this place on a map? and how are the votes and political offices established and filled. I do not see how a court of law could accept such irrational concepts as the whole truth and nothing but the truth.

Argument III

The plaintiff in the divorce action, Alice M. Smith Calhoun, has failed to prove her claim of abandonment as required by section 211 of the Domestic Relations Laws of New York. The claim of abandonment is false as hereinafter will be shown by the plaintiff-appellant. The proceedings of the Supreme Court of New York indicate that neither testimony nor evidence was offered to corroborate the allegations of abandonment. This is contrary to the Domestic Relation Law as it pertain to a default judgement.

Alice M. Calhoun alleges that her husband, Robert Calhoun Jr. has abandon her since September, 1973. On the other hand she also claims that her husband would continuously demand of her what she had done about her anti-discrimination case against her employer

That on or about November 1973, defendant again insisted upon discussing plaintiff's anti-discrimination case.

That on a Sunday in or about August 1974, defendant again insisted upon bring up the question of plaintiff's anti-discrimination case.

Along with these obvious contradictions of fact, the plaintiff-appellant will show this Court a "Notice of Appeal" signed by Alice M. Calhoun granting me the power of attorney to pursue the appeal of her anti-discrimination case.

These allegations contradict themselves without question. How can one be abandoned if the person abandoning them is constantly working to protect and provide for that abandoned party.

Since the plaintiff-appellant has never has departed from his spouse with the intention not to return or not to resume cohabitation, the claim fails to meet the requirements for abandonment. (see 24 Am Jur 2d, Divorce and Separation section 98) The plaintiff-appellant understands "abandonment" to mean the unilateral separation of one spouse from the other against the other spouse's will and for a period of one year. I do not find his criterior established in these allegations neither can I find evidence to substantiate such a claim. Certainly if I was present on or about Sunday in August 1974, the action began in February 1975 was a bit premature and the statements that abandonment began in September 1973 are somewhat questionable.

While the defendant-appellee, Alice M. Smith Calhoun, is claiming abandonment, she is at the same time seeking an order to evict her husband from the family residence. The fact that she is requesting that he leave within fifteen days is assumptive that he is at present in residence. All this point to some conspiratorial action on the part of the persons advocating this scheme. It is clear to the Court as it is clear to the appellant that these inconsistancies can not support a true set of facts.

Argument IV

Attorney George M. Winston committed perjury when he stated in his "Affidavit Of Regularity" that the defendant, Robert Calhoun Jr. had not appeared in this action. (see Answer to Summons) The proceedings were contrary to the rules practice and the laws of the Supreme Court and the laws of the State of New York.

Attorney George M. Winston committed fraud and perjury when he notorized an "Affidavit Of Service" sworn to by Roberta Calhoun on the 18th day of September 1975. The affidavit is fraudulant and the service is contrary to the laws of the State of New York.

To emphasize the intent not to allow the plaintiff-appellant an opportunity to be heard in this matter, Attorney George M. Winston failed to serve a copy of the "Note of Issue" or the "Affidavit of Regularity" on the unsuspecting defendant. How was he to know on August 11, 1975 that the defendant was not going to offer testimony in rebut to this action? Why did the plaintiff, Alice M. Calhoun, conceal her day in court from her husband? He was in the house everyday and on the day she went to the Supreme Court to give testimony they kept it from the defendant, Robert Calhoun Jr. This had to be conspired between the Attorney and the client. The fact that the defendant was not served a copy of the Note Of Issue is evidence that he did not have an opportunity to be heard. That alone denies him due process of law.

CONCLUSION

The acts perpetrated by the defendants-appellees are not legal proceedings nor are they in accordance with any rules of the courts. The acts and omissions are illegal, intentional, conspiratorial and collusive. They are intended to extort from the plaintiff-appellant his property without due process of law. They deny the plaintiff-appellant the equal protection of the Domestic Relation Laws of the State of New York. The defendants-ap ellees have failed the following:

- 1. To make a prima facie case of the marriage.
- 2. To obtain jurisdiction over the plaintiff-appellant.
- 3. To prove their claims by testimony or evidence.
- 4. By introducing fraudulant documents in the case and by making false statements to the court.
- 5. Failing to give proper notice to the defendant

CONCLUSION

The plaintiff-appellant has shown to this Court the failings and the faults conjured up by the defendants-appellees for the purpose of extorting from him his property and his holdings for the personal gain of the culprits. The Supreme Court of the State of New York has erred in its handling of this matter which aided and abetted the conspirators. The acts and omissions are inexcusable and the damage done to the plaintiff-appellant is immeasureable. His home has become a prison for him and his family treats him as a stranger. His life and aspirations are destroyed and he longs for some solution that will end all this trouble and corruption.

The plaintiff-appellant's civil and constitutional rights have been abrogated his family has been deceived, and his property seized, all without due process of law. He ask this Court to intercede to protect his rights and restore his property to him. He further ask this Court to restrain and prohibit those who have committed these acts and omissions from ever committing them again. He ask this Court to compensate him for his sufferings and his losses and to give consideration to his many days and nights of effort in defending against these allegations and untrue charges as well as the irreplaceable enjoyment of his loss family life.

The defendants-appellees are in no ways innocent nor are they deserving of pity. They are villainous in character and deceitful in tactic as well as full of greed and contempt. They need only the opportunity and the unsuspectful soul to put upon in order to go to work. There is a time for all things and now is a time for truth and justice. Respectfully submitted

Robert Calhoun Jr. 111-11 132nd Street Jamaica, New York, 11420 JA-9-1374

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Supreme Court of the State of New York County of QUEENS

ALICE M. CALHOUN,

Plaintiff

against

ROBERT CALHOUN, JR.,

Defendant

Index No. Plaintiff designates Queens

County as the place of trial The basis of the venue is Plaintiff's residence. Summons with Notice Plaintiff resides at 111-11 132n Street, Jamaica, N. Y.

County of Queens

ACTION FOR A DIVORCE

To the above named Defendant

Unit are hereby similated to serve a notice of appearance, on the Plaintiff's Attorney(s) within 20 days after the service of this summons, exclusive of the day of service (or within 30 days after the service is complete if this summons is not personally delivered to you within the State of b); and in case of your failure to appear, judgment will be taken against you by default for the aded in the foundment without the foundment of the foundment o ntourlinexakundakinekakunununganekakathisperkanemithehexemilistien. Buresunekishexerxipegongr.

Dated, February 24, 1975.

GEORGE M. WINSTON Attorney(s) for Plaintiff Office and Post Office Address 108-18 Queens Blvd., Forest Hills, N.Y. 11375 SUPREME COURT OF THE STATE OF NEW YORK COUNTY OF QUEENS

ALICE M. CALHOUN,

Plaintiff,

-against-

COMPLAINT

ROBERT CALHOUN, JR.,

Defendant.

Plaint ff complaining of the defendant, by GEORGE
M. WINSTON, her attorney, alleges and respectfully shows to this
Court:

FOR A FIRST CAUSE OF ACTION

FIRST: That heretofore and on or about the 27th day of February, 1955, plaintiff and defendant were married in St. Louis, Missouri.

second: That the plaintiff, ALICE M. CALHOUN, was and still is a resident of the County of Queens, City and State of New York at the time of the commencement of this action and has been a resident of the County of Queens, City and State of New York for a continuous period of more than one year immediately preceding the commencement of this action.

THIRD: That two children have been born of the said marriage of the plaintiff and defendant herein, to wit:

ROBERTA CALHOUN, age eighteen years, born on February 8, 1956 and ARLEEN CALHOUN, age thirteen years, born on June 16, 1961.

FOURTH: That over a long period of time, defendant's conduct toward the plaintiff has been one of mistreatment, attempts to humiliate, physical threats, uniform cruelty and abusive conduct.

toward the plaintiff has been peculiarly psychotic and abnormal; that by reason of the following acts of the defendant, the physical and mental well-being of the plaintiff has been endangered so as to render it unsafe and improper for plaintiff to cohabit with defendant:

- a) That commencing in or about September 1973 and continuing until on or about June 1974, after plaintiff had completed her teaching assignment at York College, defendant would continuously demand of plaintiff what she had done about her antidiscrimination case against her employer; that while plaintiff was eating her dinner, defendant would insist that plaintiff was going to lose her case against her former employer and if this happened, he would make life very difficult for her; on one occasion in the evening, defendant picked up plaintiff's purse and threw it across the kitchen floor, all of which caused plaintiff to Suffer mental anguish and physical discomfort resulting in her inability to eat her evening meals.
- b) That in or about November 1973, defendant again insisted upon discussing plaintiff's anti-discrimination case calling
 plaintiff a "black-assed nigger" and "stupid ass" in the presence
 of the children and insisted upon talking to plaintiff all night

long, depriving plaintiff of her sleep and causing her mental anguish and physical discomfort resulting in her inability to property perform her duties the following day in her employment.

c) That on a Sunday in or about August 1974, defendant again insisted upon bringing up the question of plaintiff's anti-discrimination case, threatened plaintiff with physical harm, putting plaintiff in fear of her life and resulting in plaintiff's calling for police protection.

SIXTH: That the defendant, in addition to the above cruelty, engaged in constant bickering, constant criticism creating apprehension and fear of beatings inflicted upon the plaintiff by defendant; all of which caused plaintiff much grief and suffering and mental anguish and contributed to the decline of her physical health and has seriously impaired her nerves and nervous system requiring medical attention and treatment.

SEVENTH: That for many months prior to the date hereof, defendant has constantly failed, refused and neglected to properly provide for the support and maintenance of plaintiff and the support, maintenance and education of the issue of the marriage and for the maintenance of the several improved real estate properties owned by the parties herein as tenants by the entirety.

employed as a Junior Electrical Engineer by the New York City

Transit Authority and on information and belief, earns in excess of \$15,000.00 per year.

NINTH: Plaintiff requests that the several real estate properties owned by the parties herein as tenants by the entirety be sold and the proceeds thereof be divided between the parties herein equally, except the two-family home located at 111-11 132nd Street, Jamaica, New York, presently occupied by the parties herein of which plaintiff requests that she be awarded exclusive possession and that defendant be directed to vacate said premises forthwith.

TENTH: Plaintiff requests that she be awarded a reasonable counsel fee to enable her to prosecute this action; that defendant be compelled to pay for the support and maintenance of plaintiff and the support, maintenance and education of the issue of the marriage and that the care and custody of the issue of the marriage be awarded to the plaintiff.

FOR A SECOND CAUSE OF ACTION

ELEVENTH: Plaintiff repeats, reiterates and realleges each and every allegation contained in Paragraphs FIRST through TENTH inclusive with the same force and effect as if set forth herein at length.

TWELFTH: That defendant, ROBERT CALHOUN, JR., has abandoned the plaintiff, ALICE M. CALHOUN, with intent not to return and without any cause or justification and without the plaintiff's consent and notwithdtanding that the plaintiff has

always conducted herself as a faithful and obedient wife.

THIRTEENTH: That the aforesaid abandonment of the plaintiff by the defendant has been for a period in excess of one year commencing on or about September 19/3 to the present time.

WHEREFORE, plaintiff demands judgment of absolute divorce against the defendant that the bonds of matrimony between the plaintiff and defendant be forever dissolved; that defendant be compelled to pay for the support and maintenance of the plaintiff and the support, maintenance and education of the issue of the marriage; that the care and custody of the issue of the marriage be awarded to the plaintiff; that plaintiff be awarded a reasonable counsel fee to enable her to prosecute this action; that the several real estate holdings of the parties herein, except the home located at 111-11 132nd Street, Jamaica, New York, which is presently occupied by said parties, be sold and the proceeds thereof be divided equally between said parties; that the plaintiff have exclusive possession of the home of the parties presently occupied by the parties herein and that defendant be directed to vacate said premises forthwith and that the plaintiff have such other and further relief as may be just and proper together with the costs of this action.

> GEORGE M. WINSTON Attorney for Plaintiff, 108-18 Queens Blvd., Forest Hills, N. Y. 11375

The undersigned, an attorney admitted to practice to the courts of New York State, coeffice that the within hus been compared by the undersigned with the original and found to be a true and complete copy. Dated: STATE OF NEW YORK, COUNTY OF The undersigned, an attorney admitted to practice in the courts of New York State, shows: that deponent is and knows the contents thereof; that the same is true to deponent's own knowledge, except as to the matters therein stated to be alleged on information and belief, and that as to those matters deponent believes it to be true. Deponent further says that the reason this verification is made by deponent and not by The grounds of deponent's belief as to all matters not stated upon deponent's knowledge are as follows: The undersigned affirms that the foregoing statements are true, under the penaltics of perjury. STATE OF NEW YORK, COUNTY OF QUEENS , being duly sworn, deposes and says that in the within action; that deponent has ALICE M. CALHOUN read the foregoing plaintiff Con and knows the contents thereof; that the same is true to deponent's own knowledge, except as to the matters therein stated to be alleged on information and belief, and that as to those matters deponent believes it to be true. Sworn to before me, this 18th day of Febtuary, GE M. WINSTON NOTARY PUBLIC, State of New York No. 30-9707650 Qualified in Nassau County STATE OF NEW YORK, COUNTY OF Expires March 30, 1975 , being duly sworn, deposes and says that deponent is the and knows the contents thereof; and that the same is true to deponent's own knowledge, except as to the matters therein read the foregoing named in the within action; that deponent has stated to be alleged upon information and belief, and as to those matters deponent believes it to be true. This verification is made by deponent because . corporation. Deponent is an officer thereof, to-wit, its The grounds of deponent's belief as to all matters not stated upon deponent's knowledge are as follows: Sworn to before me, this ... STATE OF NEW YORK, COUNTY OF being duly sworn, deposes and caye, that deponent is not a party to the action, is over 18 years of age and resides at 19 deponent served the within attorney(x) for day of That on the the address designated by said attorney(s) for that purpose in this action, at by depositing a true copy of same enclosed in a postpaid properly addressed wrapper, in - a post office - official depository under the exclusive care and custody of the United States post office department within the State of New York.

day of

Sworn to before me, this

SUPREME COURT OF THE STATE OF NEW YORK COUNTY OF QUEENS ALICE M. CALHOUN, Plaintiff, AFFIDAVIT OF REGULARITY -against-ROBERT CALHOUN, JR., Defendant. STATE OF NEW YORK) COUNTY OF QUEENS)SS: GEORGE M. WINST , being duly sworn, deposes and says: That he is the attorney for the plaintiff in the above entitled action. That the Summons and Complaint in this action were duly served personally on the defendant, ROBERT CALHOUN, JR., on the 25th day of February, 1975, at his home located at 111-11 132nd Street, Jamaica, Queens County, New York, by H. Albert Miller, a duly licensed process server. That defendant has not appeared in this action; his time to do so has fully expired and has not be extended by stipulation or otherwise. That deponent is an attorney at law duly admitted to practice in all courts of the State of New York.

and in accordance with the rules and practice of this Court and this affidavit is made for the purpose of placing this action on the UNDEFENDED MATRIMONIAL CALENDAR of this Court to obtain a Judgment of Divorce in favor of the plaintiff and against the defendant as prayed for in the complaint herein and for auch other and further relief as this Court may deem just and proper in the circumstances.

GEORGE M. WINSTON

Sworn to before me this 11th day of August, 1975.

> Unit Call to No. 1000 Cash for the County Cash for the County

TIATT HIRSTHILDE

ALICE HE CATHOUR

PERINEIFF

w HHEEMPE .

ROBERT CALIDIN JR.

Defendant 1 1

CITY OF NEW YORK) SS; COUNTY OF QUEENS)

H. Albert Miller, being duly aworn, deposes and says, that he resides at 165-15 Jewel Ave. Flushing, Queens, New York, and that on the 25th day of February 1975 at 181-11 132nd St. Jameica, Queens, New York, he served the foregoing summons and verified complished upon Robert Calhoun, Jr. by delivering to, and personally leaving with the said Robert Calhoun, Jr. a true completered.

Deponent further says that he knew the person so served to be the person mentioned and described in said summons and verified complaint as the defendant therein.

Deponent further states that the words "ACTION FOR A DIVERGE" were legibly typewritten across copy of the summons and verified complaint to serre:.

At the time and place of the aforementioned service, your deponent had in his possession, a photograph of the above named defendant, and that he, ROBERT CALHOUN JR. acknowledged his identity as the husband of Alice M.Calhoun, the plaintiff in this action, and readily accepted service of the summons and verified complaint herein.

Defendant is described as: Male:Black: 47-48 yrs old: 5-10: growing a beard: weight 300 lbs. black hair.

Deponent is over the age of 21 years and not a party to this action.

H. Albert Miller essies

Sworn to before me this 26th day of February 1975

At a Special Term Part V of the Supreme Court of the State of New York, held in and for the County of Queens, at the General Courthouse, 88-11 Sutphin Blvd., Jamaica, New York, on the 9th day of September, 1975.

PRESENT:

HON. JOAN MARIE DURANTE

JUSTICE.

ALICE M. CALHOUN.

Plaintiff.

-against-

FINDINGS AND JUDGMENT

ROBERT CALHOUN, JR.,

Defendant.

Plaintiff, ALICE M. CALHOUN, having brought this action for a judgment of absolute divorce by reason of the cruel and inhuman treatment and abandonment of the plaintiff by the defendant, ROBERT CALHOUN, JR., and the Summons bearing the notation "ACTION FOR A DIVORCE" and verified Complaint having been duly served upon the defendant personally within this State and the defendant having failed to appear or answer the complaint and the time for the defendant to appear or answer the complaint having expired and said time not having been extended by stipulation or otherwise and said plaintiff having applied to this Court, at a Special Term Part V thereof, for judgment for the

relief demanded in the complaint and the matter having been set trial down for a hearing on the 27th day of August , 1975, plaintiff having on that day appeared before me and presented written and oral proof of service and in support of the essential allegations of the complaint and said proof having been heard and considered by me and a motion having been made by plaintiff to trial conform the pleadings to the proof presented at the heart and the said motion having been granted, I FIND AND DECIDE AS FOLLOWS:

FINDINGS OF FACT

- 1. That plaintiff and defendant were both over the age of twentyone years when this action was commenced.
- 2. That at the time of the commencement of this action and for a continuous period of at least one year preceding such commencement, plaintiff resided in this State.
- 3. That plaintiff and defendant were married in the City of St. Louis, State of Missouri, on the 27th day of February, 1955.
- 4. That there are two children of the marriage, namely: ROBERTA CALHOUN, born February 8, 1956 and ARLEEN CALHOUN, born June 16, 1961.
- 5. That for more than one year last past and since September,
 1973, defendant has willfully and continuously abandoned the
 plaintiff in that he has failed and refused to cohabit with plaintiff and has abandoned the plaintiff.

6. That plaintiff has at all times conducted herself in a proper and wifely manner toward the defendant and in a proper and motherly manner toward her children and that at no time did plaintiff do anything to provoke defendant's abandonment of her.

CONCLUSIONS OF LAW

- I. That jurisdiction, as required by Section 230 of the Domestic Relations law, has been obtained.
- II. That plaintiff is entitled to a Judgment of Divorce and to the granting of the incidental relief awarded herein.

JUDGMENT

NOW, on motion of CEORGE M. WINSTON, attorney for the plaintiff, it is

ADJUDGED AND DECREED that the marriage between ALICE M. CALHOUN, plaintiff, and ROBERT CALHOUN, JR., defendant, is dissolved by reason of abandonment; and it is further

ADJUDGED AND DECREED that ALICE M. CALHOUN, plaintiff, be awarded custody of the infant issue of the marriage, to wit: Roberta Calhoun, born February 8, 1956 and Arleen Calhoun, born June 16, 1961; and it is further

ORDERED, ADJUDGED AND DECREED that the defendant shall pay to the plaintiff by check, cash or money order drawn to the order of the plaintiff and forwarded on Monday of every other week commencing with the plaintiff and forwarded on Monday of every first Monday after the date of the hearth herein, to the home of the plaintiff or at such other place as she may designate in

writing the sum of \$473.00 bi-weekly for the infant children of the parties herein, which sum is inclusive of all obligations of the defendant for the support and maintenance of the infant children of the parties herein, except extraordinary medical or dental expenses; and it is further

ORDERED, ADJUDGED AND DECREED that defendant, ROBERT CALHOUN, JR., be and he hereby is directed to wacate the home of the parties herein located at 111-11 132nd Street, Jamaica, New York, within fifteen days after service of a copy of these Findings and Judgment and said defendant shall permit the plaintiff and her children to have exclusive possession of said premises; and it is further

ORDERED, ADJUDGED AND DECREED that the defendant, ROBERT CALHOUN, JR., be and he hereby is directed to pay to plaintiff's attorney, GEORGE M. WINSTON, the sum of \$500.00, as and for counsel fees incurred by said plaintiff in this action; and it is further

ORDERED, ADJUDGED AND DECREED that this Court and the Family Court shall have concurrent jurisdiction to determine the amount of support to be paid by the defendant to the plaintiff for the two minor children herein and the visitation rights of the defendant and that a copy of these Findings and Judgment of Divorce be filed with the Clerk of the Family Court, Queens County, within ten days after entry. ORDERED, that the wife may resume her maiden name.

ENTER

GRANTED SEP. 9, 1975 JOHN J. DURANTE Clerk

JOAN MARIE DURANTE J.S.C. JOHN J. DURANTE, Clerk SUPREME COURT OF THE STATE OF NEW YORK COURTY OF QUEENS

Plaintiff.

-against-

AFFIDAVIT OF SERVICE

ROBERT CALHOUN, JR.

Defendant

STATE OF NEW YORK)
COUNTY OF QUEENS,)SS:

ROBERTA CALHOUN, being duly sworn, deposes and

says:

That deponent is not a party to the action, is over 18 years of age and resides at 111-11 132nd Street, Jamaica, New York.

That on the Jay of September, 1975, at No. 111-11 132nd Street, Jamaica, New York, deponent served the within Certified Copy of Findings and Judgment with Notice of Entry upon ROBERT CALHOUN, JR., the defendant herein, by delivering a true copy thereof to him personally. Deponent knew the person so served to be the person mentioned and described in EMPER Said papers as the defendant therein.

Sworn to before me this

day of September, 1975.

ROBERTA CALHOUN

ROBERTA CALIDO

EXHIBIT "B"

Sworn to before me, this

day o

19

BEST COPY AVAILABLE

SUPREME COURT OF THE STATE OF NEW YORK COUNTY OF QUEENS ALICE M. CALHOUN, INDEX NUMBER 9866 Plaintiff, -against-MOTION FOR A STAY AND ROBERT CALHOUN JR., A SHOW CAUSE TO BE HEA! Defendant. NOTICE IS HEREBY GIVEN THAT THE DEFENDANT MOVES to have the judgement stayed and to have the plaintiff show cause why he should not _be heard in this matter. Defendant swears that he was not notified as to the date, time or place to answer the complaint. Defendant request that he be furnished the transcript and docu of this proceeding and be given time to answer the allegations. I respectfully submit this motion for judgement Sept. 19, 1975 11-11 132nd Street Jamaica, New York, 11420 Robert Callioun Je 4 111-11 132nd St. Ozone Park 20, M. V. Yamuica 9-1374 JUDGEMENT IS STAYED for a show cause conference to be assigned and executed. SO ORDERED BY JUDGE_ SUPREME COURT OF NEW YORK.

United States District Court

FOR THE

EASTERN DISTRICT OF NEW YORK

75C 1565

ROBERT CALHOUN JR.

Plaintiff

SUMMONS

THE STATE OF NEW YORK, its agents SUPREME COURT OF NEW YORK, QUEENS COUNTY, CHIEF CLERK KALISKI, Mr. KRUMSIEK and COURT OFFICER REED.

AND
ALICE M. SMITH and GEORGE M. WINSTON
Defendant

To the above named Defendant :

You are hereby summoned and required to serve upon Robert Calhoun Jr.

plaintiff's attorney , whose address

an answer to the complaint which is herewith served upon you, within 20 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

Clerk of Court.

Deputy Clerk.

Date: 9- 22-75

[Seal of Court]

UNITED STATES DISTRECT COURT EASTERN DISTRICT OF NEW YORK

ROBERT CALHOUN JR., Plain iff,

-against-

STATE OF NEW YORK, its agents SUPREME COURT OF NEW YORK, CHIEF CLERK KALISKI, MR KRUM-SIEK, COURT OFFICER REED AND

ALICE M. SMITH, and GEORGE M. WINSTON Defendants

DOCKET NUMBER

COMPLAINT

This action arises under the Constitution Of The United States Of America the Fourteenth Amendment, the Civil Rights Act Of 1964 as Amendment, Criminal Code 20, 18 US 241, 242, 42 US 1983, Civil Rights Act etc. here in after more fully appears. The matter in controversy exceeds, exclusive of interest and costs, the sum of ten thousand dollars.

Plaintiff claims that the State of New York did deny him due process of law on September 19, 1975 when the Supreme Court of New York at 88-11 Sutphin Bouvelard, Jamaica, New York refused to accept his papers for filing.

Plaintiff claims that the State of New York did violate his constitutional rights when the Supreme Court of New York issued a judgement against him without allowing him the opportunity to be heard.

Plaintiff claims that the State of New York denied him equal protection of the law when it refused to allow him to contest the divorce decree.

Plaintiff claims that the State of New York denied him his right to petition the government when Court Officer Reed would not allow him to speak to Judge Livoti about the refusal of the clerks to accept his papers for filing.

Plaintiff claims that Chief Clerk Kaliski violated his Constitutional Right to be heard when he refused to accept his papers for filing.

Plaintiff claims that Mr. Krumsiek did also violate his right to to be heard.

Plaintiff claims that Alice M.Smith and George M. Winston did violate his right to be heard when they conspired to deny him the opportunity to contest the divorce.

Plaintiff claims that Alice M. Smith did invade his privacy and seized his personal property and used it against him. Plaintiff claims that George M. Winston did interfere with is marriage infringing on his contract and separating him from his wife by coercing her against him. Plaintiff claims that the State of New York and George M. Winston did

misuse the legal process in obtaining and granting the divorce decree.

Plaintiff begs the Court to grant him twenty five million dollars for the personal injury inflicted upon him by this gross act of deceit, fraud and premeditated turpitude.

Plaintiff begs this Court to find that New York State in violation of its own laws and liable to the plaintiff for punitive as well as personal damages of two thirds of the total damages. First because the State of New York aided and abetted the culprits in this conspiracy and that they by threat of force did deny the plaintiff's right to petition for redress. This to the plaintiff's beliefs is enslavement.

Plaintiff further pleads to this Court to restrain and prohibit George M. Winston from ever perpetrating such an act again. Plaintiff ask that his liability be fixed at two thirds of the remaining one third of the damages prayed for.

Plaintiff now ask the Court to supervise the execution of its judgement in action.

Plaintiff, Robert Calhoun Jr. submit this humble plea for your most lind consideration and your most honest judgement.

alhoun Jr.

Notary

On this day of September 21, 1975 came Robert Calhoun Jr. swearing to the statements made in this complaint and requesting that I witness his Signature of Notary William Wullis signing of it as it now stands.

WILLIAM MULLER COMMISSIONER OF DEEDS Certificate filed in New York Co Commission Expires March 1, 19

Copies to: -

Attorney General Of The State Of New York 2 World Trade Center New York, New York

George M. Winston Esq. 108-18 Queens Blvd. Forest Hills New York 11375

Alice M. Smith 111-11 132nd Street Jamaica, New York 11420 UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

ROBERT CALHOUN JR.,

Plaintiff

-against-

The STATE OF NEW YORK, its agents SUPREME COURT OF NEW YORK, QUEENS COUNTY, Chief Clerk KALISKI, Mr. KRUMSIEK and Court Officer REED and

ALICE M. SMITH and GEORGE M. WINSTON Defendants

MOTION TO STAY A

JUDGEMENT

THE PLAINTIFF BEGS THIS COURT TO STAY THE JUDGEMENT OF THE SUPREME COURT OF THE STATE OF NEW YORK SO THAT I MAY BE HEARD ON THE COMPLAINT FILED AGAINST ME. I BEG THE COURT FOR IMMEDIATE RELIEF FROM THIS JUDGEMENT TO AVOID A PERSONAL HARDSHIP ON ME OF VACATING MY HOME. I HAVE NO OTHER PLACE TO LIVE NOR HAVE I EVER MADE RESIDENCE ANYPLACE ELSE SINCE APRIL 1963:

Plaintiff pleads that should this judgement against him be executed that he be given the opportunity to reevaluate the terms of the complaint to hold the defendants liable for any further suffering inflicted upon him.

IN THIS MOTION, the plaintiff is pleading for urgent emergency relief from an impending punishment imposed by the judgement.

Respectfully submitted

September 21,1975

Rebert Walhoun Jr

The Judgement set forth in "FINDINGS AND JUDGEMENT" index number 9866 of the Supreme Court Of New York, County of Queens is hereby stayed by this Court, the United States District Court for the Eastern District of New York.

Copies to:

Attorncy General Of New York 2 World Trade Center New York, New York

So ordered					
Date of this	order				

AFFIDAVIT OF FACTS

ON FRIDAY SEPTEMBER 19, 1975, I went to the Supreme Court Of New York located at 88-11 Sutphin Boulevard, in Jamaica, New York to file a motion to a judgement that I had received on Monday September 15, 1975. I went to the Special Sessions Office and offered my papers for filing. The man in the Special Sessions Office said that my papers were not in proper order and that I should get a lawyer to put them in order. When I asked what was wrong with my papers he did not say yet he still refused to accept them. I asked him to reject them officially and give them back to me. He refused to reject them also. I went to the Matrimonial Session and they too refused to accept them. I then tried to see a judge (Judge Livoti) and a court officer (Officer Reed) confronted me and said that he would not let me go up to see the judge. I went outside and took the name of the court officer that had directed me to the court room (his name: Officer Stumpf # 2222). I got the name of the man in the Matrimonial Session that refused to accept them and I also got the name of the Chief Clerk in the Special Sessions Office that had refused to accept them (Chief Clerk Kaliski, Mr. Krumsiek). A Mr. Hecht was one of the court personnel that I spoke to in my efforts to get my papers filed.

After more than forty minutes of going back and forth and not understanding why my papers were not being accepted I left the court.

I feel that this denial of my right to be heard is part of a conspiracy that involves the defendants in this action.

NOTARY

I, Robert Calhoun Jr. do swear that the statements made in this affidavit is true to the best of my recollection.

Robert Carnoun Jr.

SWORN BEFORE ME Nim. Milling ON

HE 120 DAY OF Septentes 1973

NINETEEN SEVENTY FIVE.

Cartination

Hilliam Mulley

UNITED STATES DISTRICT COURT EASTERN DISTRICT OF NEW YORK

ROBERT CALHOUN, JR.,

75-C-1565

Plaintiff,

- against -

THE STATE OF NEW YORK, its agents, SUPREME COURT OF NEW YORK, QUEENS COUNTY, CHIEF CLERK KALISKI, MR. KRUMSIEK, and COURT OFFICER REED and ALICE M. SMITH and GEORGE M. WINSTON,

September 26, 1975

Defendants.

Submitted by:

ROBERT CALHOUN, JR. Plaintiff, pro se

JUDD, J.

MEMORÁNDUM AND ORDER

Plaintiff seeks an order to stay a judgment for divorce, support and incidental relief, entered in the Supreme Court of New York, Queens County. (# 9866/75 - Durante, J.). The judgment requires him to vacate the home where he has lived for twelve years.

Plaintiff's complaint asserts a civil rights action under 42 U.S.C. § 1983 against the State of New York, the Supreme Court of the State of New York, Queens County, certain employees of that court, and two private citizens, including

the attorney who represented his wife in the divorce action.

The gist of plaintiff's complaint, as understood by this court, is that the named court employees refused to accept his pro se papers for filing in the divorce action. His papers sought a stay on the ground that he had not been given notice or a hearing.

As an initial matter, this action must be dismissed as against the State of New York and the Supreme Court of the State of New York, Queens County. Such defendants are not "persons" within the meaning of the Civil Rights Act. Monroe v. Pape, 365 U.S. 167, 81 S.Ct. 473 (1961).

enjoin a state court judicial proceeding, <u>Huffman</u> v. <u>Pursue</u>, <u>Ltd.</u>, U.S. , 95 S.Ct. 1200 (1975), and the lack of any constitutional right to counsel in civil actions, <u>Matter of Smiley</u>, 36 N.Y.2d 433, 369 N.Y.S.2d 87 (1975), there may be a duty on court personnel at least to show a <u>pro se</u> litigant how to draw a simple order to show cause for a stay pending appeal.

While the court employees may perhaps be liable for turning away an uncounseled litigant, and the divorce judgment may be voidable if it was entered without notice, plaintiff wife is a necessary party to any action to stay execution of the judgment. She has not been named as a defendant in this court (unless she is the defendant named as Alice M. Smith),

and federal jurisdiction of the controversy with her raises different issues.

As a practical matter, plaintiff's request to prolong his residence in his former matrimonial domicile should be made to the Supreme Court of New York, or by appeal from the divorce decree, and preferably with the aid of counsel.

At worst, plaintiff might hold his ground and defend a contempt motion by showing his frustration in seeking a stay. This court can express no opinion on that subject.

It is ORDERED that the complaint be dismissed as against the defendants, the State of New York and the Supreme Court of the State of New York, Queens County; and it is further

ORDERED that the motion to stay a judgment of the Supreme Court of New York, County of Queens, be denied, without prejudice to renewal on compliance with the Rules of this Court, including notice to plaintiff's wife and a supporting memorandum of law.

(D. U. S. D. J.)

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF NEW YORK ROBERT CALHOUN, JR., Plaintiff. CIVIL ACTION FILE \$75C 1565 -against-THE STATE OF NEW YORK, ITS AGENTS SUPREME COURT OF NEW YORK, QUEENS COUNTY, CHIEF CLERK KALISKI, Mr. ANSWER KRUMSIEK and COURT OFFICER REED and ALICE M. SMITH and GEORGE M. WINSTON. Defendants. Now comes the defendants, GEORGE M. WINSTON and ALICE M. CALHOUN, sued herein as ALICE M. SMITH, answering the Complaint of the plaintiff herein, allege as follows: 1. Defendants deny each and every allegation contained in the unnumbered paragraphs of the Complaint in so far as they make any reference to said defendants.

FOR A FIRST AND COMPLETE DEFENSE

person of the defendants in that the Summons, copy of which is annexed hereto and marked Exhibit "A", was not issued by the Clerk of this Court as required by the Federal Rules of Civil Procedure; and further in that the Summons and Complaint were not served personally on said defendants and were not served by a United States Marshal as required by the Rederal Rules of Civil Procedure.

FOR A SECOND AND COMPLETE DEFENSE

3. That this Court does not have jurisdiction of the subject matter of this action as to said defendants herein in that this plaintiff has not exhausted his judicial remedies in the action pending in the Supreme Court, Queens County; he has neither moved to vacate the Judgment of Divorce obtained against him therein nor filed an appeal therefrom.

FOR A THIRD AND COMPLETE DEFENSE

- 4. That heretofore, defendant, GEORGE M. WINSTON, acting as attorney for defendant, ALICE M. CALHOUN, sued herein as ALICE M. SMITH, commenced an action for divorce in the Supreme Court, Queens County on behalf of defendant, ALICE M. CALHOUN, as plaintiff and against the plaintiff, ROBERT CALHOUN JR., as defendant.
- 5. That the Summons and Complaint in said divorce action were duly personally served upon the plaintiff herein on February 25, 1975 by a duly licensed process server of the City of New York.
- 6. That shortly thereafter, this plaintiff,
 ROBERT CALHOUN, JR., conferred with defendant, GEORGE M. WINSTON,
 at his office concerning the divorce action which had been
 commenced against him by his wife and discussed not only the
 pending divorce action but also the reasons for his matrimonial
 problems; he was then and there advised to seek the services of an

attorney to represent him in said divorce action.

- 7. No further proceedings were undertaken against this plaintiff in that action until July 31, 1975, when this defendant, GEORGE M. WINSTON, wrote a letter to this plaintiff, ROBERT CALHOUN, JR., a copy of which is annexed hereto and marked Exhibit "B".
- 8. That neither plaintiff CALHOUN herein nor any attorney in his behalf communicated with defendant WINSTON concerning the pending divorce action; whereupon, defendant WINSTON, on August 15, 1975, filed a note of issue in the Supreme Court, Queens County, putting said divorce action on the calendar for trial as an Undefended Divorce Action.
- 9. That a trial was held on August 27, 1975 before the Honorable JOAN MARIE DURANTE and Findings and Judgment were thereafter duly signed by said Justice DURANTE on September 9, 1975 and entered by the clerk of the Court on September 10, 1975.
- 10. That the proceedings in the divorce action against this plaintiff in the Supreme Court, Queens County were duly and properly conducted and this plaintiff had more than ample opportunity to protect his rights therein had he so desired.

FOR A FOURTH AND COMPLETE DEFENSE

11. That the Complaint herein fails to set forth facts sufficient to state a cause of action against the defendant

herein in that plaintiff alleges mere conclusions without setting forth the details of the allegations against said defendants.

WHEREFORE, defendants pray for judgment dismissing the Complaint herein with costs and disbursements of this action.

Dated: October 13, 1975.

GEORGE M. WINSTON,

Attorney for Defendants, ALICE M. CALHOUN and GEORGE M. WINSTON

108-18 Queens Blvd., Forest Hills, N. Y. 11375

At a Special Term Part II, of the Supreme Court of the State of New York, County of Queens, held at the Courthouse, 88-11 Sutphin Blvd., Jamaica, New York, on the Mark of October, 1975.

PRESENT:

HON. ANTHONY M. LIVOTI

JUSTICE.

ALICE M. CALHOUN,

Plaintiff.

-against-

ROBERT CALHOUN, JR.,

INDEX #9866/75

Defendant.

On reading and filing the annexed affidavit of ALICE M. CALHOUN, plaintiff herein, sworn to the 10th day of October, 1975, and the affidavit of GEORGE M. WINSTON, attorney for the plaintiff herein, sworn to the 15th day of October, 1975, and upon the Judgment of Divorce of Justice JOAN MARIE DURANTE, dated the 9th day of September, 1975, directing the defendant to pay to plaintiff the sum of \$473.00 bi-weekly as and for the permanent support and maintenance of the infant children of the parties herein and further directing the defendant to pay to GEORGE M. WINSTON, attorney for the plaintiff, the sum of \$500.00

as and for counsel fees of the plaintiff and upon all of the proceedings had herein, from all of which it appears presumtively to the satisfection of the Court that the conduct of the defendant was calculated to and actually did defeat, impair, impede and prejudice the rights and remedies of the plaintiff herein, it is ORDERED that the defendant, RODERT CALHOUN, JR.,

be and he hereby is directed to show cause before this Court, at a Special Term Part V thereof, to be held at the Courthouse, 88-11 Supphin Blvd., Jamaica, New York, on the 6 day of 1975, at 9:30 o'clock in the forenoon of that day or as soon thereafter as counsel can be heard why he should not be declared guilty of Contempt of Court in having willfully disobeyed the Judgment of Divorce of this Court granting support payments to the plaintiff for the benefit of the infant children of the parties herein and granting counsel fees to the attorney for the plaintiff and failure to vacate the premises of the parties herein; said Judgment being dated September 9, 1975, in that said defendant failed to make payments of \$473.00 bi-weekly for three payments in the total sum of \$1,419.00, as of the 10th day of October, 1975; in that he failed to make payment of \$500.00, as and for counsel fees to the attorney for the plaintiff herein and in that he has failed to vacate the premises of the parties herein within fifteen days after service of a copy of the Judgment of Divorce herein; and why he should not be required to pay counsel fees to

the attorney for the plaintiff herein in the amount of \$500.0° for preparing and bringing on this motion on behalf of the plaintiff herein and why plaintiff should not have such other and further relief as the Court may deem just and proper in the premises.

SUFFICIENT CAUSE APPEARING THEREFOR let service of a copy of this Order to Show Cause and papers upon which it is granted on the defendant, ROBERT CALHOUN, JR., on or before the 30th day of October, 1975, be deemed good and sufficient service.

ENTLK

A. M. J.

J.S.C.

GRANTED OCT: 17, 1975 John J. Durante SUPREME COURT OF THE STATE OF NEW YORK COUNTY OF QUEENS

ALICE M. CALHOUN.

Plaintiff.

-against-

PLAINTIFF'S AFFIDAVIT

ROBERT CALHOUN, JR.,

Defendant.

STATE OF NEW YORK)
COUNTY OF QUEENS)SS:

ALICE M. CALHOUN, being duly sworn, deposes and says:

That she is the plaintiff in the above entitled action and submits this affidavit in support of her mution to punish the defendant as and for a Contempt of Court.

This was an action brought by the plaintiff against the defendant for a Judgment of Divorce. Findings and Judgment dated the 9th day of September, 1975 were granted in favor of the plaintiff and against the defendant. A copy of said Findings and Judgment is annexed hereto and marked Exhibit "A".

Pursuant to the provisions of said Judgment, the defendant, ROBERT CALHOUN, JR., was Ordered, Adjudged and Decreed to pay to the plaintiff on Monday of every other week, commencing September 15, 1975, the sum of \$473.00 bi-weekly for the infant children of the parties herein. That no payments have been

order of the Court herein. That the defendant was further required to vacate the premises occupied by the parties herein located at 111-11 132nd Street, Jamaica, New York, within fifteen days after service of a copy of said Findings and Judgment and the defendant was required to permit the plaintiff and her children to have exclusive possession of said premises.

The defendant was further required and directed to pay to plaintiff's counsel, GEORGE M. WINSTON, the sum of \$500.00, as and for counsel fees, no part of which, an information and belief, has been paid by the defendant herein to plaintiff's counsel.

That on the 15th day of September, 1975, a certified copy of the Findings and Judgment with Notice of Entry was duly personally served upon the defendant, ROBERT CALHOUN, JR. The affidavit of service is annexed hereto and marked Exhibit "B".

That as of the date hereof, defendant will be in arrears in connection with support payments, as provided by the provisions of the Findings and Judgment herein, for three payments at the rate of \$473.00 bi-weekly for a total of \$1,419.00. That the defendant will also be in arrears in the sum of \$500.00, as and for counsel fees due to plaintiff's counsel herein. In addition, defendant has failed and refused to vacate the home of the parties herein located at 'lll-ll 132nd Street, Javaica, New York, within the fifteen day period, after service of a copy of the Findings and Judgment in this action.

That defendant's failure to make the bi-weekly payments as aforesaid, to pay the counsel fees as aforesaid and to vacate the home of the parties as aforesaid was willful; deliberate and did defeat, impede, impair and prejudice plaintiff's rights herein.

That no previous application for the relief sought herein has been made to this or any other Court or Justice thereof.

WHEREFORE, plaintiff respectfully requests that this Court sign the annexed Order requiring the defendant, MORERT CALHOUN, JR., to show cause why he should not be punished as and for a Contempt of Court for his failure and refusal to comply with the provisions of the Findings and Judgment, as set forth above, and why plaintiff should not have such other and further relief as the Court may deem just and proper in the premises.

ALICE M. CALHOUN

Sworn to before me this

10 day of October, 1975.

Michael Fitzpature

Tologyantis, State of 1.9.

Sufficiency of the Sa-14516228

Themely of 1961.

SUPREME COURT OF THE STATE OF NEW YORK COUNTY OF QUEENS

ALICE M. CALHOUN.

Plaintiff,

-against-

ATTORNEY'S AFFIDAVIT

ROBERT CALHOUN, JR.,

Defendant.

STATE OF NEW YORK)
COUNTY OF QUEENS)SS:

GEORGE M. WINSTON, being duly sworn, deposes and says:

That he is the attorney for the plaintiff in the above entitled action.

That this action was brought by the plaintiff against the defendant to obtain a Judgment of Divorce. As indicated in the affidavit of ALICE M. CALHOUN, sworn to the 10th day of October, 1975, a Judgment of Divorce was recovered by the plaintiff against the defendant and signed by Honorable JOAN MARIE DURANTE on the 9th day of September, 1975.

Thereafter and on the 15th day of September,

1975, defendant, ROBERT CALHOUN, JR., was served with a certified
copy of Findings and Judgment with notice of entry. The affidavit
of service is annexed hereto and marked Exhibit "B".

Judgment of Divorce, defendant was required to pay to deponent the sum of \$500.00, as and for counsel fees. That as of the date of this affidavit, no such payment has been received from the defendant herein.

WHEREFORE, deponent joins with plaintiff and respectfully requests that this Court sign the annexed Order requiring the defendant, ROBERT CALHOUN, JR., to show cause why he should not be punished as and for a contempt of Court for his failure and refusal to comply with the provisions of the Judgment of Divorce herein and why plaintiff should not have such other and further relief as the Court may deem just and proper in the premises.

GEORGE M. WINSTON

Sworn to before me this 15th day of October, 1975.

PENARO MIDSOPHOPII
NOTARY ROPIC STATE IF HER
Contact to the County
Contact to the County
This Express March 30, 20/9

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

ROBERT CALHOUN JR.,
Plaintiff,
-against-

THE STATE OF NEW YORK et al, Defendants. CIVIL ACTION NUMBER

75 C 15 65

NOTICE OF A MOTION

PLEASE TAKE NOTICE that plaintiff moves to have the defendant, THE STATE OF NEW YORK, its agents, SUPREME COURT OF NEW YORK, QUEENS COUNTY, CHIEF CLERK KALISKI, MR. KRUMSIEK, COURT OFFICER REED, held in default for not responding to a summons as required by Rule 4 of the Federal Rules of Civil Procedure.

The plaintiff further NOTICES THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT that the "transcript" of the proceedings in the SUPREME COURT OF NEW YORK, is included for record purposes. THE PLAINTIFF argues that this transcript is too vague on its face in that it does not indicate that this is the direct examination of Mrs. Alice M. Calhoun nor does it indicate who is examining person being questioned. The transcript does not represent that i.cs. Calhoun was was present at this inquiry nor does it specify the oath being given to Mrs.Alice M. Calhoun. The plaintiff feels that the procedures used in this inquiry is deficient as well as the information that it provides the Court. The information does not satisfy the New York State Domestic Law of providing evidence to substantuate claim.

THE PLAINTIFF FURTHER NOTICES THE COURT OF APPEALS that the District Court in dismissing the complaint, took on the posture of adversary when it did not base its dismissal on pleadings made in the law suit. THE PLAINTIFF FURTHER NOTICES THE COURT OF APPEALS that it take note of the correspondence that took place between Honorable Orrin G. Judd of the United States District Court and the Honorable Moses M. Weinstein of the New York State Supreme Court.

THE PLAINTIFF FEELS THAT his Constitutional rights to an impartial trial has been violated in this dismissal and that the rights of the defendants have been usurped by the Court in this matter. In considering this appeal the plaintiff begs for a fair an impartial judgement based of the facts an merits of this case.

The plaintiff certifies that he has sent copies of this motion to the defendants in this action.

October 27, 1975

Pro se

COUNTY OF NEW YORK)

STATE OF NEW YORK

HAROLD TOMPKINS, being duly sworn, deposes and says:

- l. I am an Assistant Attorney General in the office of LOUIS J. LEFKOWITZ, "ttorney General of the State of New York."

 I submit this affidavit in opposition to plaintiff's motion for entry of a default judgment.
- 2. The summons and complaint were served on defendant State of New York on September 24, 1975. On September 26, 1975, prior to the expiration of defendant's time to answer, the Court (Judd, J.) dismissed the complaint as against defendants State of New York and Supreme Court of New York, Queens County.
- 3. On or about October 3, 1975 plaintiff filed a notice of appeal from said order of dismissal.
- 4. The Clerk of this Court has advised your deponent that there are no affidavits of service on any other defendant named in the complaint in the Court's files.

5. Moreover, the exhibits annexed to plaintiff's motion indicate that court officials responded to a letter from Hon. Orrin Judd requesting information concerning the matter which forms the basis for the complaint.

WHEREFORE, plaintiff's motion for entry of a default judgment should be denied in all respects.

HAROLD TOMPKINS

Sworn to before me this 7th day of November, 1975

Assistant Attorney General of the State of New York

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF QUEENS

ALICE M. CALHOUN,
Plaintiff,
-against-

ROBERT CALHOUN JR., Defendant. INDEX NO. 9866/75

REPLY TO CRDER TO

SHOW CAUSE

DEFENDANT WISHER TO STATE THAT HE HAS BEEN DENIED HIS CONSTITUTIONAL RIGHT TO BE HEARD IN THIS MATTER. Defendant swears that he was not notified as to the date, time, and place where he could contest this action. Defendant further says that this is a conspiracy to deny him his Constitutional Rights and to deprive him of his home and property.

FIRST DEFENSE

DEFENDANT DID RECEIVE A "FINDINGS AND JUDGEMENT" ORDER ON SEPTEMBER 15th, 1975. This order was served on the defendant by his daughter, Roberta Calhoun, who is also a party to this action. (see affidavit of service in show cause order) DEFENDANT STATES THAT THIS SERVICE IS ILLEGAL, IMMORAL, AND UNCONSTITUTIONAL. It violates the Civil Practice Law and Rules, the Domestic Relations Laws of New York, as well as the United States Constitutional guarantees of right to privacy and security in ones home and papers etc.

DEFENDANT FURTHER DECLARES THAT HE DID MAKE AN ATTEMPT TO BE HEARD IN THIS MATTER ON SEPTEMBER 19th, 1975. The papers that he presented to the clerks in this Court were refused for lack of form. DEFENDANT STATES THAT THIS REFUSAL TO ACCEPT HIS PAPERS WERE A VIOLATION OF THE CIVIL PRACTICE LAW AND RULES OF NEW YORK. Defendant further says that this violation also denies his equal protection of the laws as well as due process of law as guaranteed by the United States Constitution.

SECOND DEFENSE

THE CHARGES MADE BY THE PLAINTIFF ARE FALSE AND CAN NOT BE SUBSTANT-UATED BY EVIDENCE NOR HAS CHARGES BEEN PROVEN. The lack of evidence in this case as well as the failure to substantuate the claim is also a violation of the Domestic Relation Law of New York. In granting this divorce, this Court erred when it did not require satisfactory proof of the charges made. THE DEFENDANT STATES THAT THIS OMISSION DENIES HIM THE EQUAL PROTECTION OF THE LAWS OF THE STATE OF NEW YORK. The plaintiff's complaint alleges that commencing in or about September 1973 and continuing until on or about June 1974defendant would constantly demand of the plaintiff what she had done about her anti-discrimination case....etc.(see FIFTH argument of the COMPLAINT) but in the THIRTEENTH argument of the same COMPLAINT, the plaintiff argues that commencing on or about September 1973 an abandonment took place that exist to the present time. At the same time that plaintiff is pleading abandonment she is saying that she wants the several real estate holdings sold except the home that they occupy. The defendant says that this is very contridictory to him because he understands the term "Abandonment" to mean separate and apart by unilateral consent.

The defendant says that the mere fact that he was discussing a family problem at a dinner meal suggest that he had not abandoned the household unless this mode of family life has become obscene in Domestic Law. The fact of some harse terms used by the defendant to arouse the plaintiff's urgency of the matter upset her indicate that this was not his customary attitude or normal way of addressing her. This says the defendant was his way of gettin his wife allerted to what might and did occur in her law suit. The defendant says that it was his way of trying to protect his wife's interest.

THIRD DEFENSE

THE DEFENDANT DENIES ALL THE ALLEGATIONS OF CRUEL AND INHUMANE TREATMENT AS WELL AS THE ALLEGATION OF ABANDONMENT. The defendant does not deny that he
did chastise his wife on her insincerity of prosecution of a "Discrimination Complaint "brought by her against her employer. This "Discrimination Complaint began in February 1970 on my advice to my wife. I had warned her at the outset that
in the event that she initiated the complaint that certain procedures were to be adhered to for her benefit. I also told her not to initiate the action unless she was
willing to presevere to the end. She insisted that she wanted to initiate the complaint so I advised her what to do and went with her on many occasions to help her and

to reassure her in her efforts. I even went to the library to research the legal and administrative proceedings and remedies that were either for or against her interest in the matters that were being contested. The plaintiff failed to heed my advice from February 1970 until September 1973 in a matter that could have given her and her children complete financial security for their life time. I was trying to urge upon my wife the basic and simple things about law and order which she failed to realize was correct until it was too late and now she is trying to redeem herself at my expense. I can not see how the plaintiff can ask this court to give her in excess of twelve thousand dollars of the defendants annual salary of fifteen thousand dollars when she could not ask the Federal District Court for no more than seven thousand dol-·lars from a private corporation worth more than a billion dollars. On the one hand, she knows very well that her husband can not afford to pay even half what she is requesting and continue providing for himself but on the other hand the corporation that was liable to her in her " Discrimination Complaint " could well afford to pay to her in millions what she is asking in thousand of her husband. This the defendant describes is what he called " niggerism ". He also states that what he refers to as " stupid " is one who does not know and refuses to seek help or to accept help. Defendant states that he feels that his wife has an ." independence mania "-- she is trying to prove to others that she can survive alone or without help. At the same time he feels that she competes with him to prove to herself that she is making it work. A counseller at the family court in Queens told her that he detected strong competition in our dispute.

THE DEFENDANT MADE THE ABOVE STATEMENTS TO SHOW THE PATIENTS AND TOLERANCE HE HAS SHOWN TOWARD THE PLAINTIFF IN VERY IMPORTANT MATTER FROM WHICH THIS
ACTION EMERGED. For more than three years he tried to prepare his wife for a day in
court that had to come and because she failed to heed his counsel she missed out on
a chance of a life time. The husband is furious for what his wife has done so he feels
that she is incompetent in making money decisions and will not allow her to manage his
money matters anymore so the wife calls in her lawyer to get rid of the husband but not
get rid of his money. The defendant says to this court that this is a greedy and oner-

A QUESTION TO THE PLAINTIFF: "Why didn't you provide for a property settlement in your divorce decree or in your pleadings?" The defendant claims that you omitted this procedure to avoid his being properly notified. The property settlement could not have been made without his knowledge as this divorce was contracted. The defendant further states that you told him that the divorce uncontested would cost five hundred dollars which your attorney says he has received yet he continues to request five hundred dollars from the defendant. I ask further what is the other five-hundred dollars for?

FOURTH DEFENSE

The defendant states that this action was not commenced and jurisdiction acquired in accordance with paragraph 304 of the Civil Practice Law and Rules which states: "An action is commenced and jurisdiction acquired by service of a summons. A special proceeding is commenced and jurisdiction acquired by service of a "notice of petition or order to show cause." Defendant swears that neither a "notice of petition nor an order to show cause was served on him. Defendant did receive a summons and complaint by personal service and defendant did try to comply with the conditions of the summons that he serve an appearence upon the plaintiff's attorney by visiting the office of the Attorney of Record George M. Winston. I tried to express my feelings that the action was not beneficial nor necessary. Mr. Winston was interested in dividing the properties or selling them and dividing the proceeds. I am not now nor was I at that time interested in selling or dividing the properties. I said that I would discuss the matter but then he said that I should have a lawyer to discuss it with him. I refused this arrangement because I said that I wanted to do my own negotiating and he refused to negotiate with me so that ended my appearence.

FIFTH DEFENSE

THE DEFENDANT CLAIMS THAT FRAUD WAS COMMITTED IN THE AFFIDAVIT OF SERVICE FOR THE " FINDINGS AND JUDGEMENT " THAT WAS SERVED ON HIM.

1. The "Findings and Judgement " was served to me by my daughter Roberta E. Calhoun (see show cause order).

- 2. The statement sworn to in the "Affidavit" of service that the deponent, Roberta Calhoun, is not a party to this action is false. The defendant states that this notarize document constitute both fraud and conspiracy on the part of Mr. George M. Winston who is counsel for the plaintiff as well as the notarizing agent of this document. The fact that Mr. Winston knows my daughter, Roberta Calhoun, makes him completely liable for this act of fraud with intent to deceive this court.
- 3. The defendant states that this service is in violation of CPLR 2103. The defendant believes this service to be immoral, illegal and unconstitutional. The plaintiff has violated his right to privacy and to be secure in his house and papers etc. as guaranteed by the United States Constitution.

SIXTH DEFENSE

Defendant denies fact 3 under "Findings of Facts" and says that he was not a party to a marriage in the City of St. Louis, State of Missouri, on the 27th day of February, 1955.

Since fact 4 relies on the truth of fact 3, fact 4 is miss stated or incorrectly construed in this action.

Defendant denies fact 5 as false and contradictory to the pleadings of this complaint. If the fifth argument of the Complaint is true, then how can fact 5 possibly be true?

Defendant disputes the 6th fact as a complete cover-up attempt to deceive the Court. The plaintiff has stopped performing all services for the defendant even to the point of denying him the use of household appliances such as the use of the washer and dryer, the television, use of electric lights as well as laying claim to food items that he should not touch and even requesting that he do not use the refrigerator and telephone. The plaintiff has move out of the master-bedroom and has took the bedroom that Roberta use to occupy. She has installed a lock with a key so that she can keep it locked when she is in the bed. Under these

circumstances, it is the defendant who is being denied the opportunity to cohabitate with the plaintiff.

SEVENTH DEFENSE

The defendant further states that the Court was in error when it issued this decree without satisfactory proof of marriage as well as proof of the charges. Domestic Relations Law paragraph 211 provides that a final judgement shall not be granted by default for want of appearance, or pleading, or by consent, or upon trial of an issue without satisfactory proof of grounds for divorce. The defendant argues that no evidence was produced to substantuate the plaintiff's allegations in this action.

EIGHTH DEFENSE

DEFENDANT STATES THAT ATTORNEY GEORGE M. WINSTON COMMITTED PERJURY WHEN HE STATED THAT THE DEFENDANT FAILED TO APPEAR IN ANSWER TO THE COMPLAINT BEFORE THE EXPIRATION OF THE TIME TO REPLY TO THE SUMMONS AND COMPLAINT. (see item 6 of " THIRD AND COMPLETE DEFENSE ") Exhibit " A " The defendant further informs this court that the testimony of the plaintiff in the trial proceedings is deceiving when she states that her income is a little more than \$20,000.00 per year. On August 27, 1975, the total income of the plaintiff was more than 40,000 dollars a year and that excludes more than four thousand dollars that she received for teaching at York College between September and June.

CONCLUSION

THE DEFENDANT ASK THE COURT TO DISMISS THESE TRUMP UP ALLEGATIONS THAT ARE UNFOUNDED AND UNTRUE. Defendant has shown to this court a fraudulant conspiracy whose intent is to deceive this court and to extort from the defendant his home and property in a way that denies him due process of law.

THE DEFENDANT BEGS THIS COURT TO FIND THE CULPRITS GUILTY AND LIABLE FOR THE DESTPUCTION OF HIS HOME AND THE HARMONY OF ITS MEMBERS. For loss of his wife's services and the diminution of affection of his children, he ask the Court to assess damages of ten million dollars for personal injury and triple the personal injury damages for punitive damages.

CONCLUSION

The defendant states that this hoax by the plaintiff and her conspirators has caused him to lose considerable rest, has caused him continuous aggravation and has denied him many of the pleasures that he could have enjoyed had he been free of these charges. The defendant has spent many hours at home and in the Queens Public Library defending against these allegations and request that the Court take into account the value of this time and effort in granting compensation to the defendant.

DEFENDANT WILL ACCEPT A GRANT OF FINAL DECREE OF DIVORCE AS THE JUDGEMENT NOW STANDS PROVIDED THE PLAINTIFF AND HER COUNSEL BE MADE TO PAY THE DAMAGES CLAINED BY THE DEFENDANT AND PROVIDED AN EQUITABLE PROPERTY SETTLEMENT BE AGREED TO BY THE PLAINTIFF AND THE DEFENDANT UNDER THE COURT'S SUPERVISION. THE DEFENDANT SAYS THAT THE RECORD SHOULD BE MADE RIGHT AND THE DIVORCE GRANTED TO HIM FOR THE CRUEL AND INHUMANE TREATMENT THAT HE HAS RECEIVED.

I close this defense and submit my request for your honorable judge-

November 10, 1975

ment.

NOTARY

On November 10, 1975 Came Robert Calhoun Jr. swearing to the statements made in the above named document. In witness thereof I set my signature and my seal.

Date niverbe 10th 1975

sign Killiam Muller

NOTERTHAM MULLER
COMMISSIONER OF DEEDS
CHY OF NEW YORK 4-1273
Certificate filed in New York County
Commission Expires March 1, 19, 76

SUPREME COURT - STATE OF NEW YORK NEXTEL/SPECIAL TERM, PART 5 QUEENS COUNTY

	JOAN MARIE DURANT	Justice.	
LICE M. CALHOUN,	*		
	Plaintiff,	INDEX NUMBER	9866 19 7
. — agair	nst —	MOTION DATE	Nov. 6 19 7
OBERT CALHOUN, JR.,		MOTION CAL NUMBER	5
	Defendant.	TRIAL CAL NUMBER	·····
	how Cause - Affidavits		
Replying Affidavits			
Affidavits	······································		
	ılations — Minutes		
Briefs: Plaintiffs - Defenda	nts - Petitioners - Responde	ents —	•
Upon the foregoing papers i	t is ordered that this motion	ls_disposed_of	as follows:
Defendent's opposi	ng affidavit pro so d setting aside the	e is treated a	s a cross moti

September 9, 1975.

The issues raised therein and on plaintiff's motion in chief for

The issues raised therein and on plaintiff's motion in chief for an order adjudging defendant to be in contempt for failure to comply with the aforesaid judgment monifestly require a hearing for the proper resolution thereof. Accordingly, the entire matter is set down for hearing before Special Term Part 5-A of this court on January 19, 1975.

SUPREME COURT OF THE STATE OF NEW YORK COUNTY OF QUEENS

ALICE M. CALHOUN, Plaintiff,

-against-

ROBERT CALHOUN JR., Defendant.

INDEX NO. 9866/75

Memorandum Of Law

MEMORANDUM OF LAW IN SUPPORT OF "REPLY TO ORDER TO SHOW CAUSE".

.... No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws. U.S.C.A. Const. 14 Amend.

FIRST DEFENSE

The defendant pleads "Shelley vs Kraemer" - The action of State Courts in imposing penalties or depriving parties of other substantive rights without providing adequate notice and opportunity to defend is a denial of due process of law. Shelley vs Kraemer, Mich. & Mo. 1948, 68 S Ct 836, 334 US 1, (92 L Ed. 1161,), 3 ALR Zd 441. He further pleads "House vs House" - Principle of due process require that parties whose rights are affected be heard - and in order that they may be heard, they must first be notified. Fundamental requisite of due process is notice and opportunity to be heard. House vs House, N. C. App. 1974 207 SE 21. 339. Also see Bowle vs Town of West Jefferson, 1950 57 S. E. 2d 369, 231 N. C. 408. "Due process of law" means notice and hearing in that order. "

In order to render a divorce valid, even if granted in the State of domicil, there

must be notice to the defendant by personal service of process, or where authorized

by statute, by publication or other type of notice as specified by the law of the State.

Foote vs Foote, 192 Misc. 270, 77 NYS 2d 60.

The service of the "Findings and Judgement" order by Roberta Calhoun on September 15, 1975 is contrary to the provisions specified by the law of the State of New York. This service does however reveal the fraud that is being perpetrated in this conspiracy. The false statement embodied in the affidavit and the notarizing of this false statement serves to point unmistakingly the intent of the guilty parties. This attempt to deceive this Court is also weighted with the violation of the defendant's right to privacy and security in his home, papers, etc. as well as denial of equal protection of the laws. (see R 2103a of CPLR) Also see Gage vs Rentze, 59 Misc. 2d 334, 299 NYS2d 98 (Sup Ct Monroe Co. 1969) citing Weinstein, Korn and Miller.

The Court's refusal to accept the defendant's motion on September 19, 1975 because of form is contrary to CPLR sect. 103 as well as R 2101. This refusal is further weighted with the denial of equal protection of the laws along with malicious aggravation. Defendant says that his motion meets the requirements of CPLR R2101.

SECOND DEFENSE

In granting the divorce decree to the plaintiff, the Court overlooked that section of the Domestic Relation Law which states: "In a matrimonial action, a final judgement shall not be entered by default for want of appearance or pleading, or by consent, or upon trial of an issue, without satisfactory proof of the grounds therefor...except for adultry....etc. All other pleadings in a matrimonial action shall be verified. (see DRL sect. 211) This oversight infringes on the equal protection clause and denial of fourteenth amendment rights.

U.S.C.A. Amend. 14. The grounds on which this decree was granted has not been proven nor has it been substantuated by evidence. (see court file)

"Where prior action by wife against husband resulted in determination that the wife, without just cause, wrongfully excluded the husband from their apartment and refused to cohabitate with him, that decision is decisive on the issue of wife's abandonment of husband, and even if there had been a good faith attempt at reconciliation by the wife once she abandoned her husband his cause of action had accrued and any offer of return thereafter would be of no avail accordingly, husband granted divorce. "Seaman vs Seaman, 37 AD2d 551, 322 NYS2d 577 (1st Dept. 1971). Also see Zizzi vs Zizzi, 33 AD2d 926, 306 NYS2d 961 (3d Dep't. 1970)

The state becomes a party to the conspiracy by denying the defendant the equal protection of the laws. "The essence of constitutional right to "equal protection of the laws" is that all persons similarly situated must be treated alike. U.S.C.A Const. Amend. 14; Const. N.Y. art. 1, sect. 11.; Myer vs Myer, 66 N.Y.S.2d 83, 271 App. Div. 465, motion dismissed 66 N.Y.S.2d 618, 271 App. Div. 823, affirmed 73 N.E. 2d 562, 296 N.Y. 979. (N.Y.A.D. 1947) Also see N.Y.A.D. 1967 "Equal protection clause of state Constitution is as broad in its coverage as that of Fourteenth Amendment to Federal Constitution. U.S.C.A. Amend. 14; Const. N.Y. art. 1, sect. 11.

Town of Greenburgh vs Board of Sup'rs. of Westchester County, 277 N.Y.S. 2d 885, 53 Misc. 2d 88.

The defendant further argues <u>Griffin vs Griffin - That local practice</u>, of which defendant had notice when divorce decree was entered, permitted the docketing as a judgement arrears of alimony thereunder, did not satisfy the requirement of "due process" so that such proceedings might be had without further notice. <u>Griffin vs Griffin</u>, App. D.C. 1946, 66 S Ct 556, 327 US 220, 90 L Ed. 635. rehearing denied 66 S Ct 975, 328 US 876, 90 L Ed. 1645.

The defendant says that these gross omissions by the Court did deprive him of

his Constitutional Rights which resulted in his having to defend against allegations and improperly instituted charges that could have readily been dismissed by the Court had these omissions not occurred. The defendant therefore ask that judgement be accessed against those agents and agencies of the State of New York that are responsible for the acts or omissions that resulted in these constitutional violations.

THIRD DEFENSE

The defendant argues In re Hanrahan's Will, 1937 - This clause (due process) is so vital that judgement rendered without notice or appearance is not only merely erroneous, irregular or voidable, but is void. In re Hanrahan's Will, 1937, 194 A. 471, 109 Vt. 108. Also see L. D. Reeder Contractors of Ariz. vs Higgins industries Inc., C. A. Cal. 1959, 265 F. 2d 768. "A judgement will be invalid for lack of due process if no reasonable notice or no reasonable opportunity to present defense is given."

The defendant argues that the judgement handed down in this matter on September 9, 1975 should not have been imposed and should be invalidated for lack of "due process and for not according equal protection of the laws." The defendant ask this tribunal to indemnify him for this unfortunate circumstance and to restrain and prohibit the guilty parties from ever engageing in a similar scheme.

FOURTH DEFENSE

The defendant further argues - "The Fourteenth Amendment, in declaring that no state shall deprive any person of life, liberty, or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws, undoubtedly intended not only that there should be no arbitrate spoliation of property, but that equal protection and security should be given to all under like circumstances in the enjoyment of their personal and civil rights; and that all persons should be equally entitled to pursue their happiness and acquire and enjoy property. Barbier vs Connolly, 113 US 27, 5 S Ct 357, 28 L Ed 923.

The defendant rest this defense on - The civil rights guaranteed by the Fourteen-

th Amendment cannot be impaired by the wrongful acts of individuals unsupported state authority in the shape of laws, customs, or judicial or executive proceedings. Civil Rights Cases, 109 US 3, 3 S Ct 18, 27 L Ed 835

The provisions of the Fourteenth Amendment to the Federal Constitution are not confined to the action of the state through its legislature, or through the executive or judicial authority but its provisions relate to and cover all the instrumentalities by which the state acts and so whoever, by virtue of public position under a state government, deprives another of any right protected by that amendment against deprivation by the state, violates the constitutional inhibition; and as he acts in the name of the state and for the state, and is clothed with the state's powers, his act is that of the state. Raymond vs

Chicago Union Traction Co. 207 US 20. 28 S Ct 7. 52 L Ed 78

CONCLUSION

The defendant has shown to this court without any rebut from the plaintiff that a conspiracy exist and that deceipt has been engaged in by plaintiff's parties. The plaintiff has failed to prove her claim of "abandonment" while the defendant has shown that the procedure used was contrary to the Domestic Relation Law of New York and in violation of the Civil Practice Law and Rules. This is grounds for negating the judgement and exonerates the defendant.

By the testimony of the plaintiff that "she has refused to cohabitate with the defendant and that she has moved out of the common bedroom into a single locked bedroom" she leaves grounds for awarding judgement for the defendant, ibid

The defendant has further shown that this Court has become a party to this conspiracy by not upholding the Domestic Relation Law of New York and for not insisting on the proper adherence to the Civil Practice Law and Rules. The defendants Civil Rights as well as his Constitutional Rights have been violate and abridged and he has suffered much aggravation and loss much time, rest and enjoyment defending against these allegations.

The defendant now begs this court to set the record straight and in accordance with the evidence render judgement for the defendant and against the plaintiff. He further pleads for proper indemnification for the untrue allegation, the deprivation of "due process" and the denial of the "equal protection of the laws."

The defendant prays for the damages sought in his "Reply to Order to Show Cause". The defendant also ask this Court to restrain and prohibit the plaintiff, the plaintiff's counsel and those agents and agencies of the State of New York from all further such acts against the defendant. Restrain these parties from retaliating or taking any adverse action against the defendant for his defense in this action and grant to him a divorce decree and the damages that are setforth in his pleadings.

In order that the State of New York can be vindicated from further Federal action the defendant is agreed to having the same damages assessed against the state as is outstanding in his complaint against the plaintiff and her counsel that of: forty million dollars total cumulative damages.

This memorandum is submitted humbly and forthrightly for your most honorable judgement.

ROBERT CALHOUN JR. 111-11 132nd Street Jamaica, New York 11420 Form MOM

SUPREME COURT

QUEENS

MEMORANDUM

TERM, PART

Index No. 9866/75

ALICE M. CALHOUN

BY KASSOFF,

J.

VS.

DATED February 24,

76

ROBERT CALHOUN, JR.

This is a motion by plaintiff for an order to punish defendant for contempt for his failure to comply with an order of this court dated September 9, 1975. Defendant, in opposing affidavits pro se, requested relief vacating and setting aside the judgment of divorce. The court treated defendant's opposing affidavits as a cross motion.

Defendant first appeared on January 19, 1976 without counsel and stated that he did not need counsel to proceed. The court very strongly suggested to defendant that it would be in his best interests to obtain an attorney to represent him. The court recommended that defendant go to the Bar Association if he needed an organization to refer an attorney. The case was adjourned, and then called on the adjourned date of February 18, 1976. The court once again inquired if defendant needed counsel to represent him, to which he stated "No" and after once again telling the defendant he could have an adjournment to obtain an attorney, the defendant refused and the hearing commenced.

After a hearing, plaintiff's motion to punish the defendant for contempt is granted and the defendant is adjudged to be in contempt of court and fined the sum of \$1,919, said sum representing child support arrears and counsel fees. Defendant may purge himself of his contempt for non-payment of child support by paying \$419 within 10 days of receipt of a copy of the order to be entered hereon, and the balance in ten equal weekly payments of \$100 each, commencing 21 days after service of a copy of said order. This money is to be paid in addition to the regular bi-weekly child support payments of \$473.

of attorney's fees by paying \$100 within 10 days of receipt of a copy of the aforesaid order, the balance to be paid in five equal payments of \$80 each, at weekly intervals thereafter.

Plaintiff is given leave to enter a money judgment in the sum of \$1,919.

Defendant is directed to pay to the plaintiff the sum of \$250 as counsel fees for the bringing of this motion. Defendant is directed to pay \$100 within 10 days of receipt of a copy of the above-mentioned order, the balance to be paid in three equal payments of \$50 each, at weekly intervals thereafter.

The court also finds defendant to be in contempt for failing to vacate the marital premises, as provided in the judgment of divorce. Defendant is directed to vacate the marital premises within 5 days of service of a copy of the order to be entered hereon.

Defendant's cross motion to vacate and set acide the judgment of divorce is denied.

Settle order.

J.S.C.

At a Special Term, Part 5-A, of the Supreme Court of the State of New York, held in and for the County of Queens, at the Courthouse, 88-11 Sutphin Blvd., Jamaica, N.Y., day of March, 1976.

PRESENT:

HON: EDWIN KASSOFF.

JUSTICE.

中學 1995年1月 11日 新月 · 111日日 ALICE M. CALHOUN,

the same of the same of the same of the same of Plaintiff,

THE POST OF STATE OF THE PROPERTY WAS A PROPERTY OF -against-

The second of the party of the party of ROBERT CALHOUN, JR.,

Index No. 9866/75

is alone of any month with a set Defendant.

Plaintiff, ALICE H. CALHOUN, having brought on a motion by order to show cause to punish defendant for contempt for defendant's failure to comply with the judgment of this Court dated September 9, 1975 and defendant appearing pro se and submitting affidavit in opposition to said motion requesting relief vacating and setting aside the Judgment of Divorce and said Part of the sale of the same and affidavit having been treated by the Court as a cross-motion,

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NOW on reading and filing the Order to Show Cause dated the 17th day of October, 1975, the affidavit of plaintiff, ALICE M. CALHOUN, sworn to the 10th day of October, 1975, the affidavit of GEORGE M. WINSTON, attorney for plaintiff, sworn to the 15th day of October, 1975, the Fire ags and Jue sent dotted the th day of September, 1975, and the affidavit of service of

ROBERTA CALHOUN, sworn to the 18th day of September, 1975, showing service of a certified copy of Findings and Judgment with notice of entry upon the defendant, ROBERT CALHOUN, JR., on the 15th day of September, 1975 and the affidavit of service of H. ALBERT MILLER, sworn to the 18th day of October, 1975, showing service of the Order to Show Cause upon the defendant on the 18th day of October, 1975, all submitted in support of said motion and the affidavit of the defendant, ROBERT CALHOUN, JR., sworn to November 10, 1975, submitted in opposition to said motion and said motion having come on to be heard before Hon. JOAN MARIE DURANTE in Special Term, Part V of this Court and Justice DURANTE having rendered her decision dated December 16, 1975 referring this matter for a hearing before Special Term, Part V-A on January 19, 1976 and said matter having come on for a hearing before the justice presiding in Special Term Part V-A on January 19, 1976 and said justice having adjourned the hearing to February 18, 1976 to afford defendant the opportunity to obtain an attorney to represent him in said hearing and said defendant having indicated to the Court that he was not in need of counsel and wished to proceed pro se and GEORGE M. WINSTON, attorney for plaintiff, appearing in support of said motion and defendant, ROBERT CALHOUN, JR., appearing pro se in opposition to said motion and it appearing presumptively to the satisfaction of this Court that payment cannot be enforced by means of the sequestration of defendant's

property or by resorting to security, no security having been given by the defendant and that the defaults of the defendant in failing to make the said payments as provided in the aforesaid Judgment dated September 9, 1975, and the defaults, violations and non-compliance of the defendant in other respects hereinbefore and hereinafter described was calculated and did defeat, impair, impede and prejudice the rights and remedies of the plaintiff herein and that the defendant has been personally served with a copy of the aforesaid Order to Show Cause and due deliberation having been had and upon filing the written opinion of the Court NOW, on motion of GEORGE M. WINSTON, attorney for plaintiff, it is

ORDERED, ADJUDGED AND DECREED that the motion to punish ROBERT CALHOUN, JR., the defendant herein, for Contempt of Court and punished therefor, be and the same is hereby granted; and it is further

ORDERED, ADJUDGED AND DECREED that ROBERT CALHOUN, JR., the defendant herein, is guilty of Contempt of this Court in having willfully disobeyed the provisions of the said Judgment of Hon. JOAN MARIE DURANTE, dated the 9th day of September, 1975, in that among other things, he (1) failed to make payments of \$473.00 bi-weekly for three payments in the total sum of \$1,419.00, as of the 10th day of October, 1975 and (2) filed to make payment of \$500.00, as and for counsel fees to the attorney for the plaintiff herein and (3) failed to vacate the premises of the parties herein

within fifteen days after service of a copy of the Judgment of
Divorce herein and (4) that defendant has failed to satisfactorily
explain or excuse the said defaults, violations and non-compliance;
and it is further

ORDERED, ADJUDGED AND DECREED that such misconduct was calculated to and actually did impede, impair, defeat and prejudice the rights and remedies of the plaintiff herein to her damage in the sum of \$1,919.00; and it is further

ORDERED, ADJUDGED AND DECREED that for such misconduct and Contempt of Court the defendant, ROBERT CALHOUN, JR., is fined the sum of \$1,919.00; and it is further

ORDERED, ADJUDGED AND DECREED that the defendant,
ROBERT CALHOUN, JR., may purge himself of such contempt by paying
\$419.00 within ten days of receipt of a copy of this Order and the
balance in ten equal weekly payments of \$100.00 each commencing
twenty-one days after service of a copy of this Order, said amounts
to be paid in addition to the regular bi-weekly child support payments of \$473.00; and it is further

ORDERED, ADJUDGED AND DECREED that defendant, ROBERT CALHOUN, JR., may purge himself of contempt for non-payment of attorney's fees by paying \$100.00 within ten days of receipt of a copy of this Order, the balance to be paid in five equal payments of \$80.00 each at weekly intervals thereafter; and it is further

ORDERED, ADJUDGED AND DECREED that plaintiff, ALICE M. CALHOUN, residing at 111-11 132nd Street, Jamaica, New York,

is hereby granted leave to enter a money judgment against the defendant, ROBERT CALHOUN, JR., residing at 111-11 132nd Street, Jamaica, New York, in the sum of \$1,919.00; and it is further

ORDERED, ADJUDGED AND DECREED that the defendant, ROBERT CALHOUN, JR., be and he hereby is directed to pay to the plaintiff the sum of \$250.00, as and for counsel fees for bringing on this motion, said sum to be paid by the defendant by payment of \$100.00 within ten days of receipt of a copy of this Order, the balance to be paid in three equal payments of \$50.00 each at weekly intervals thereafter; and it is further

ORDERED, ADJUDGED AND DECREED that the defendant, ROBERT CALHOUN, JR., be and he hereby is found to be in Contempt of this Court for failing to vacate the marital premises herein as provided in the Judgment of Divorce dated the 9th day of September, 1975 and defendant is again directed to vacate the marital premises within five days of service of a copy of this ORDER; and it is further

ORDERED, ADJUDGED AND DECREED that defendant's cross-motion to vacate and set aside the Judgment of Divorce herein be and the same is hereby denied.

ENTER

ALICE M. CALHOUN,

Blaintiff,

-against-

NOTICE OF APPEAL

ROBERT CALHOUN JR.,

Defendant.

PLEASE TAKE NOTICE, that the above named defendant, Robert Calhoun Jr.

hereby appeal(s) to the Court Of Appeals , Appellate Division, Second Department

from the Supreme Court

of the State Of New York

Court Queens County
of the Clerk of said Court

in this action, entered in the office

on the 24th day of February

19 76

and from each and every part thereof.

Dated: March 18, 1976

. Yours, etc.,

ROBERT CALHOUN JR.
111-11 132 Street
Jamaica, New York 11420
Attorney(s) for defendant

and Appellant

George M. Winston 108 - 18 Queens Blvd. Forest Hills, New York 11375

Attorney(s) for plaintiff

and Respondent;

SUPREME COURT OF NEW YORK

COUNTY OF QUEENS

ALICE M. CALHOUN,

Plaintiff,

Index No. 9866 /75

-against-

ROBERT CALHOUN JR., Defendant.

NOTICE OF A MOTION

The defendant moves to have this appeal consolidated with an appeal of the same issues, "Denial of Constitutional Rights," that is pending in the Court of Appeals for the Second Circuit. (75 - 8361 Robert Calhoun Jrvvs The State of New York et al). The defendant makes this request because the State of New York, The Supreme Court of New York and its agents have become parties to this action and as such its courts can not render an impartial decision in this matter.

The defendant claims that he is being denied the equal protection of the laws as well as the due process of law. These acts are violations of both the State Constitution and the United States of America's Constitution.

The defendant also moves to stay the execution of the contempt order until a determination can be made on the validity of the judgement on which it is based.

793-322

Copies to:

George M. Winston Esq. 108 - 18 Queens Blvd. Forest Hills, New York 11375 Submitted By

Robert Calhoun Jr. 111-11 132 Street Jamaica, New York 11420

UNITED STATES COURT EASTERN DISTRIC. & NEW YORK 228 CADMAN PLAZA EAST ORRIN G. JUDD BROOKLYN. N. Y. 11201 DISTRICT JUDGE September 26, 1975 Hon. Anthony M. Livoti Supreme Court, Queens County 88-11 Sutphin Boulevard Jamaica, N.Y. 11435 Re: Robert Calhoun, Jr. v. The State of New York, et al. 75-C-1565 Dear Judge Livoti: Enclosed is a copy of a memorandum and order which I have just signed in connection with a matter arising out of Queens County Supreme Court, and of the motion for a stay which the plaintiff sought to file in the Supreme Court. Since you are the Judge whom Mr. Calhoun tried to see, and against whom Court Officer Reed barred the way, I thought that you might have some knowledge of the matter or some control over further steps in the case. Sincerely yours, Orrin G. Judd United States District Court Encs.

State of New York JAMAJCA. N. Y. Moses M. Weinstein October 3, 1975 Renorable Orrin G. Judd United States District Court Eastern District of New York 225 Cadman Plaza East Brooklyn, New York 11201 Calleoun v. Calhoun Inde: No. 7866/75 Robert Calhoun, Jr. v. The State of New York et al. Index No. 75-C-1565 Wear Judge Judd: Your letter of September 26, 1975 addressed to the Honorable Anthony M. Livoti, Justice of the Supreme Court, in re the above matters has been referred to me. I am happy to enclose herewith a report of Mr. Howard F. Krumsiek, Clerk in Charge of Special Term, Part 5, which report I am sure will explain this matter completely. If I can be of any further service, please do not hesitate to let me know. Regards. Sincerely, Moses M. Weinstein Assistant Administrative Judge Civil Branch MMWem Enclosure

Honorable Orrin G. Judd United States Court Eastern District of New York 225 Cadman Plaza East Brooklyn, New York 11201

Re: Calhoun v. Calhoun ... Index No. 9366/75

Robert Calhoun, Jr. v. The State of New York et al.
Index No. 75-C-1565

Dear Judge Judd:

The nonorable Anthony M. Livoti has requested me to reply to your communication of September 26, 1975 regarding the above-captioned actions, addressed to him.

On August 27, 1975 the uncontested matrimonial action of Alice M. Calhoun against Robert Calhoun, Jr., was tried before the Honorable Joan Marie Durante at Special Term, Part 5, of this court. Findings and judgment were signed and duly entered on September 9, 1975.

Hr. Calhoun appeared at the Supreme Court, Queens County, on September 19, 1975. Investigation discloses that the following sequence of events took place:

- (1) Mr. Calhoun sought an order to show cause at Special Term, Part 2. This is the proper Part to seek an order to show cause. The personnel of Special Term, Part 2, attempted to advise Mr. Calhoun as to the necessary papers he required. Mr. Calhoun was not satisfied.
- (?) Hr. Calhoun next appeared at Special Term, Part 5, of this court and was advised that orders to show cause must be secured at Special Term, Part 2. He left without comment.

- (3) Eventually Nr. Calhoun requested to see the Administrative Judge of this court, its Honorable Moses N. Weinstein, and was directed to his office by Special Term, Part 2.
- (4) Mr. Jacob Hecht, assistant to Justice Weinstein, appeared at the office of Special Term, Part 5, with Mr. Calhoun to discuss this matter with ma. Since it was everyone's intention to help Mr. Calhoun, if at all possible, Mr. Hecht and I arrived at a possible solution for Mr. Calhoun.
- (5) I communicated with Queens Legal Services, a poverty agency, and arranged an appointment for Mr. Calhoun at 10:00 A.M. on Monday, September 22. Queens Legal Services would not represent him, but would assist him in preparing the necessary papers to secure an order to show cause. Mr. Calhoun-rejected this solution cut-of-hand and stated "I know what to do now" and left with Mr. Hecht.
- (6) Hr. Hocht advises that Mr. Calhoun entered courtroom 25, where Mr. Justice Anthony H. Livoti was presiding.
- (7) Mr. Calhoun was advised that Mr. Justice Liveti was not connected with his case. Court Officer Reed directed Mr. Calhoun to the Matrimonial Part. Mr. Calhoun then left the courtroom.
- (8) A verified complaint filed in this matrimonial action stated, among other things in reference to Mr. Calhom, "with is presently employed as a junior electrical engineer by the New York City Transit Authority."

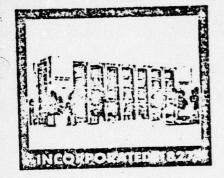
I have no further knowledge of this incident, either personal or on information and belief.

Fir. Calhoun has not returned to this court. In the event that he does return, I am sure that, as in the past, he will be treated courteously by the concerned personnel in this court.

Sincerely,

Howard F. Krumsick Clerk in Chargo of Special Term, Part 5

ce: Honorable Noses M. Weinstein,
Assistant Administrative Judge, Civil Branch
Honorable Anthony M. Livoti
William S. Capulbo, General Clerk



THE BROOKLYN SAVINGS BANK

Main Office

CORNER OF FULTON AND MONTAGUE STREETS
-BROOKLYN, NEW YORK 11201

212 624-4100

IN THE BROOKLYN CIVIC CENTER

May 5, 1976

Mr. Robert Calhoun, Jr. 111-11 132 Street Jamaica, NY 11420

Dear Mr. Calhoun:

We have today withdrawn the amount of \$5,941.10 from your account #1-165645-1 with our Bank. Since we received the Sheriff's Levy on your account, we had to satisfy your loan which we are enclosing your paid note and final payment in the amount of \$3,592.82. The balance of your account \$2,358.28 has been forwarded to the Sheriff of the City of New York in accordance with the Sheriff's Levy we recently received.

Please forward your passbook so that we can make the proper entries.

Very truly yours,

Thomas S. Ryder

- Assistant Secretary

TJR:dlm Encls.

UNITED STATES DISTRICT COURT EASTERN DISTRICT OF NEW YORK

ROBERT CALHOUN JR., plaintiff,

-against-

STATE OF NEW YORK, : defendant. :

CIVIL ACTION NUMBER

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